IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.746 OF 2004
IN
NOTICE OF MOTION NO. 1391 OF 2004
IN
SUIT NO. 1358 OF 2004

M/s.Radhika Darshan Co-op.Hsg.
Soc. Ltd. & anr. ... Appellants
vs.
1. M/s.Sunrise Developers & ors. ... Respondents

Mr.Shailesh Shah i/b. Mr.T.S.Patwardhan for the appellants.

Mr.Rajiv Narula i/b. M/s.Jhangiani Narula & Associates for the respondent no.6.

Mr.Vinod Mahadik for the respondent no.7.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 1st December 2004

P.C.

Heard Mr.Shailesh Shah, the learned counsel for the appellant and perused the impugned order and the material available on record.

2. The learned motion Judge in paragraphs 14, 15 and 16 of the impugned order observed thus:

> "14. It is therefore, clear that the defendants have legal rights to make construction of Wing "B" and they have obtained consent of the plaintiffs for doing so. I have observed and noted above that the defendants construction is not the additions and alterations to the existing wing "A". It

> is therefore, clear that the plaintiffs are trying to obstruct the construction of Wing "B" without being any legal right and inspite of giving their consent for the same.
>
> 15. So far as damage to Wing "A" on account of construction of Wing "B" is concerned, the case is against the plaintiffs. The experts were appointed by this Court and except minor hair cracks, nothing serious to prevent the construction was noted.
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> 16. Counsel for the plaintiffs also contended that the construction is not according to the sanctioned map. I do not think in the circumstances it is necessary to go to that aspect of the matter. If the construction of the defendants is beyond sanctioned map, they will have to face the consequences as they are liable for action from the authorities in that regard. The whole suit of the plaintiffs is nothing but an attempt to create obstacle in the construction for which they have no legal right and for which they have given their consent and they have not been able to make any prima facie case. The motion is frivolous and it is taken out without any legal right. Hence, Notice of Motion is dismissed with cost of Rs.10,000/-. Prayer for stay is rejected."

3. We do not find any legal infirmity in the impugned order.

4. Appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)